

Legal Action Of Wisconsin, Inc.

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TO: Larry Hartzke
Administrative Rules Manager

FROM: Bob Andersen

RE: Waiver of Costs for Copies of Medical Records for Indigents

DATE: March 6, 2003

I do not know whether this is the kind of information you are interested in at this point, but I would like to suggest that the committee consider, at some point in the future, the possibility of allowing for the waiver of costs for indigent people. I have set forth below a copy of the statute (s. 814.29) which allows for waiver of costs and fees for indigents in civil actions. I think that this statute provides a good model for the waiver of costs. Essentially, the statute allows for waiver where a person is a recipient of public assistance from a means tested program, is represented by a legal services program or is otherwise worthy of a waiver because of the person=s low income and assets, taking into account the federal poverty guidelines for that particular person or family. The first two categories B relating to the receipt of public assistance and to representation by a legal services program B simply take advantage of the fact that an assessment has already been made, regarding a person=s poverty. They make it easy to identify who is indigent. The third category exists for the purpose of providing some allowance for the person who does not fall within the first two categories.

LAW, Inc. is a non profit organization funded largely by the federal Legal Services Corporation, Inc., to provide civil legal services to low income people. LAW now provides representation for low income people in 39 counties in Wisconsin, as a result of a recent merger with Legal Services of Northeastern Wisconsin and Western Wisconsin Legal Services. One of the principal activities of LAW attorneys and paralegals is to provide legal assistance to low income clients who are applying for social security disability benefits (SSI and SSDI). These are cases that depend upon the availability of medical records. While other clients of LAW occasionally require copies of medical records, the vast majority of cases involving medical records that we handle are social security disability claims. This is a growing caseload for LAW, because of the limitations that exist under the Wisconsin Works or

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W-2" public assistance program B not the least of which is the 2 year time limit on receipt of benefits.

Applications for SSI and SSDI benefits are federal administrative claims. As a result, s. 814.29 does not apply to these claims, because that statute applies to state court claims.

Our low income clients cannot afford to pay the costs of copying these medical records. The limited resources that they have actually do not even cover the essential needs that they have for food, clothing, shelter and utilities. Legal services programs like LAW can ill afford to pay for the costs of copies of medical records, either. Funding for legal services has been nearly static for the past twenty years.

It is for these reasons that I would like the committee to consider the possibility of providing for some waiver of the costs of copies of medical records for indigent people. There are currently some medical providers who will allow for the waiver of costs for indigents now. By establishing some state policy on the waiver of costs there can be a uniform standard that applies with a uniform definition of indigency.

Following is a copy of the statute I referred to:

814.29 Security for costs, service and fees for indigents. (1) (a) Except as provided in sub. (1m) [which relates to prisoners], any person may commence, prosecute or defend any action or special proceeding in any court, or any writ of error or appeal therein, without being required to give security for costs or to pay any service or fee, upon order of the court based on a finding that because of poverty the person is unable to pay the costs of the action or special proceeding, or any writ of error or appeal therein, or to give security for costs.

(b) A person seeking an order under par. (a) shall file in the court an affidavit in the form prescribed by the judicial conference, setting forth briefly the nature of the cause, defense or appeal and the facts demonstrating his or her poverty.

(c) The finding and order of the court under par. (a) shall be in the form prescribed by the judicial conference. The court may deny the request for an order if the court finds that the affidavit states no claim, defense or appeal upon which the court may grant relief.

(d) The court shall make a finding of poverty and issue an order under par. (a) if the affidavit demonstrates any of the following:

1. That the person is a recipient of means-tested public assistance, including aid to families with dependent children, relief funded by a block grant under ch. 49, relief provided by the counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps or benefits received by veterans under s. 45.351 (1) or under 38 USC 501 to 562.

2. That the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney program based on indigence.

3. That the person is otherwise unable, because of poverty, to pay the costs of the action, proceeding or appeal or to give security for those costs. In determining the person=s ability to pay under this subdivision to pay or give security for fees and costs, the court shall consider the person=s household size, income, expenses, assets, and debts and the federal poverty guidelines under 42 USC 9902 (2).

Thanks for your consideration and if there is any further information you would like, please feel free to contact me